



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 28, 1996

Mr. David L. Barber
Assistant City Attorney
City of Arlington
Box 231
Arlington, Texas 76004-0231

OR96-0265

Dear Mr. Barber:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 35757.

The City of Arlington (the "city") received a request for information concerning the August 31, 1995, meeting of the License and Amortization Appeal Board. You contend that some of the requested information is excepted from required public disclosure under sections 552.101 and 552.107 of the Government Code. The city has no objections to releasing the remaining information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that section 551.104 of the Government Code, the Open Meetings Act, makes the certified agenda of the closed meeting confidential. We agree. Accordingly, you must withhold the certified agenda under section 552.101 as information deemed confidential by law. *See Gov't Code § 551.104(c)* ("The certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)."); *Open Records Decision No. 495 (1988)* (*Open Meetings Act specifically makes confidential certified agendas or tapes of closed meetings; Open Meetings Act removes certified agendas and tapes of closed meetings from review by attorney general under Open Records Act*).

You also claim that notes made during the closed meeting are excepted under section 552.107 of the Government Code. Section 552.107(1) excepts from disclosure

information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the

client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Although section 552.107(1) excepts information within rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct, the rule cannot be applied as broadly as written to information that is requested under the Open Records Act. Open Records Decision No. 574 (1990) at 5. To prevent governmental bodies from circumventing the Open Records Act by transferring information to their attorneys, section 552.107(1) is limited to material within the attorney-client privilege for confidential communications; "unprivileged information" as defined by rule 1.05 is not excepted under section 552.107(1). Open Records Decision Nos. 574 (1990) at 5, 462 (1987) at 13-14 (explaining scope of attorney-client privilege). Furthermore, section 552.107(1) does not protect information not containing legal advice or opinion, or revealing client confidences. Open Records Decision No. 574 (1990) at 3, 5.

You state that the closed meeting was held in accordance with section 551.074 of the Government Code for consultation with the board's attorney. You further aver that during the closed meeting the board was given legal advice in the form of a briefing by the board's attorney. You claim that the notes taken during the briefing contain the legal advice of the board's attorney. We have reviewed the notes submitted for our consideration. We agree that the notes consist of legal advice given to the board by the board's attorney. Accordingly, you may withhold the notes from required public disclosure under section 552.107 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/LBC/ch

Ref: ID# 35757

Enclosures: Submitted documents

cc: Mr. Mat Lakota
820 S. MacArthur Blvd., # 105-300
Coppell, Texas 75019
(w/o enclosures)